

67 FLRA No. 127

UNITED STATES
DEPARTMENT OF THE AIR FORCE
SHEPPARD AIR FORCE BASE
WICHITA FALLS, TEXAS
(Respondent)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 779, AFL-CIO
(Charging Party)

DA-CA-10-0215

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DECISION AND ORDER

July 11, 2014

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Before the Authority: Carol Waller Pope, Chairman, and
Ernest DuBester and Patrick Pizzella, Members
(Member Pizzella concurring)

I. Statement of the Case

This unfair-labor-practice (ULP) case is before the Authority on an exception to the attached decision of the Administrative Law Judge (Judge) filed by the Respondent. The General Counsel (GC) filed an opposition to the Respondent's exception.

The central issue in this case is whether the Respondent's exception is properly before the Authority. After the Judge held a hearing in this matter, but before she issued the attached decision, the Charging Party (Union) and the Respondent entered into a settlement agreement resolving several actions raised by the complaining witness in the ULP case. Neither the Union nor the Respondent informed the Regional Director (RD) of the FLRA's Dallas Regional Office or the Judge of the agreement. In its exception, the Respondent contends that, in the interest of justice, the Authority should vacate the Judge's decision and give effect to the settlement agreement, which the Respondent claims resolves the ULP case.

Section 2429.5 of the Authority's Regulations prohibits parties from presenting arguments to the Authority that could have been presented to an administrative law judge, but were not. Because the Respondent could have presented the settlement

agreement to the Judge, but did not do so, we hold that it is barred from presenting its argument to the Authority.

II. Background and Judge's Decision

The GC issued a complaint alleging that the Respondent violated the Federal Service Labor-Management Relations Statute (the Statute) and committed a ULP by taking certain actions against the complaining witness. The Judge then held a hearing. Four months later, the Respondent and the complaining witness entered into a settlement agreement, which was also signed by the Union president. The settlement agreement provided that it resolved "any and all ULP[s] filed by the [U]nion . . . on behalf of and/or relating to the [complaining witness]." ¹ And the Union "agree[d] . . . to withdraw any and all ULP[s] filed . . . on behalf of and/or relating to the [complaining witness]." ²

Later, the Judge issued her decision. The Judge concluded that the Respondent committed a ULP by making statements that tended to interfere with, restrain, or coerce the complaining witness in the exercise of her statutory right to act as a union representative and by discriminating against her for seeking to become a union representative. The decision did not reference the settlement agreement or otherwise indicate that the Judge knew of its existence.

III. Analysis and Conclusion: Section 2429.5 of the Authority's Regulations bars the Respondent's exception.

The Respondent argues that, "in the interest of justice," we should vacate the Judge's decision "to ensure compliance with the" settlement agreement which, according to the Respondent, resolved the underlying ULP complaint. ³

Although the Authority "allow[s] the private settlement of [ULPs] at all stages of the [ULP] process, [it] will not automatically give effect to settlements reached by the parties and proposed to the Authority for approval." ⁴ Under § 2429.5 of the Authority's Regulations, the Authority will not consider any evidence, arguments, or issues "that could have been, but were not, presented in the proceedings before the . . . [a]dministrative [l]aw [j]udge." ⁵ Section 2423.21(b)(3) of the Authority's Regulations permits a judge to entertain post-hearing motions. Thus, if parties to a

¹ Exceptions, Attach. 2, Settlement Agreement at ¶ 1.a.

² *Id.*, at ¶ 2.

³ *Id.* at 4.

⁴ *USDA, Food Safety & Inspection Serv.*, 49 FLRA 431, 435 (1994); *see also U.S. Nuclear Regulatory Comm'n*, 67 FLRA 466,-67 (2014).

⁵ 5 C.F.R. § 2429.5.

ULP proceeding enter into a post-hearing settlement agreement, one or both parties may file a motion with the judge to reopen the record in order to receive their settlement agreement into evidence.⁶

Here, the Respondent did not inform the Judge that it had entered into a settlement agreement with the Union. As noted above, the Respondent could have filed a motion with the Judge to reopen the hearing in order to consider the parties' settlement agreement. Because the Respondent could have presented this information to the Judge before her decision issued, but failed to do so, we hold that the Respondent may not now ask the Authority to vacate the Judge's decision based on the settlement agreement.

The Respondent notes that, under the terms of the settlement agreement, the Union was obligated to "withdraw [the] ULP complaint."⁷ Be that as it may, the fact remains that neither party informed the Judge prior to the issuance of her decision of the settlement's existence nor sought to move the agreement into evidence, despite having sufficient time to do so.

Accordingly, we dismiss the Respondent's exception. The Respondent has raised no other exceptions. Thus, we adopt, without precedential significance, the Judge's unexcepted-to finding that the Respondent violated the Statute by making statements that tended to interfere with, restrain, or coerce the complaining witness in the exercise of her statutory right to act as a Union representative and by discriminating against her for seeking to become a Union representative.

IV. Order

Pursuant to § 2423.41 of the Authority's Rules and Regulations and § 7118 of the Statute, the Respondent shall:

1. Cease and desist from:

(a) Threatening bargaining-unit employees for engaging in representational activities on behalf of the Union.

(b) Discriminating against Stephanie Armel, or any other bargaining-unit employee, by requiring that the employee choose between engaging in representational activities on behalf of the Union and the employee's job duties.

(c) In any like or related manner, interfering with, restraining, or coercing bargaining-unit employees in the exercise of their rights assured them by the Statute.

2. Take the following affirmative action in order to effectuate the purposes and the policies of the Statute:

(a) Post at its facilities where bargaining-unit employees represented by the Union are located, copies of the attached notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Commander, U.S. Air Force, Sheppard Air Force Base, Wichita Falls, Texas, and shall be posted and maintained for sixty consecutive days thereafter in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such notices are not altered, defaced, or covered by any other material.

(b) Pursuant to § 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Dallas Regional Office, FLRA, in writing, within thirty days from the date of this order, as to what steps have been taken to comply.

⁶ *E.g.*, *U.S. SEC*, 62 FLRA 432, 441 (2008) (ALJ granted GC's motion to reopen hearing, but parties ultimately decided additional testimony unnecessary), *enforced sub nom. SEC v. FLRA*, 568 F.3d 990 (D.C. Cir. 2009).

⁷ Exceptions at 4.

**NOTICE TO ALL EMPLOYEES
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY**

The Federal Labor Relations Authority has found that the U.S. Air Force, Sheppard Air Force Base, Wichita Falls, Texas, violated the Federal Service Labor-Management Relations Statute (the Statute), and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY EMPLOYEES THAT:

WE WILL NOT threaten bargaining-unit employees for engaging in representational activities on behalf of the American Federation of Government Employees, Local 779, AFL-CIO (the Union), the exclusive representative of our employees.

WE WILL NOT discriminate against bargaining-unit employees and interfere with, restrain, or coerce employees by requiring them to choose between engaging in representational activities on behalf of the Union and their job duties.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce bargaining-unit employees in the exercise of their rights assured them by the Statute.

Agency/Activity

Dated: _____ By: _____
(Signature) (Title)

This notice must remain posted for sixty consecutive days from the date of posting and must not be altered, defaced, or covered by other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director, Dallas Region, Federal Labor Relations Authority, whose address is: 525 S. Griffin Street, Suite 926, Dallas, TX 75202, and whose telephone number is: (214) 767-6266.

Member Pizzella, concurring:

I agree with my colleagues that the Respondent's failure to present the parties' settlement agreement to the Administrative Law Judge (Judge) precludes us from considering it now. I write separately, however, to emphasize three points.

First, I note that the parties had another option available to have their settlement agreement be given effect. In order to "facilitate[] and encourage[] the amicable settlements of disputes,"¹ the Authority has prescribed regulations for resolving unfair-labor-practice (ULP) charges at various points throughout the ULP proceeding.² Under § 2423.31(e)(1) of the Authority's Regulations, if the parties agree to settle a ULP complaint and the Regional Director (RD) approves their settlement, then the RD may request permission from the judge to withdraw the ULP complaint.³ And the General Counsel (GC) interprets this provision to apply to private settlement agreements entered into after the close of a hearing.⁴ Had the Respondent followed these procedures, it would not be in the position of having to ask the Authority to give retroactive effect to the parties' settlement agreement.

Second, I am troubled by how long it took the Judge to issue her decision in this case. The GC issued a complaint on December 3, 2010, and the hearing took place on January 27, 2011. Yet the Judge failed to issue a decision until April 17, 2013, more than two years after the hearing. As this case appears to be straightforward, I fail to see why it took twenty-six months to prepare. One of the goals of the remedial notice that the Judge ordered in this case is to "demonstrat[e] to employees that . . . the Authority will vigorously enforce rights guaranteed under the Statute."⁵ When the notice posting comes over three years after the alleged violation of the Federal Service Labor-Management Relations Statute, it undermines this aim and, in so doing, interferes with the Authority's ability to effectuate the purposes and policies of the Statute, including the prevention of ULPs.⁶

Finally, the very idea that the parties (the U.S. Air Force and AFGE) independently reached a

¹ 5 U.S.C. § 7101(a)(1)(C).

² 5 C.F.R. §§ 2423.1-2423.2, 2423.12, 2423.25, 2423.31(e).

³ *Id.* § 2423.31(e)(1) (describing process for informal settlement after opening of hearing).

⁴ FLRA, Office of the Gen. Counsel, *Litigation Manual* 3-0 to -1 (2000) available at http://flra.gov/webfm_send/804.

⁵ *U.S. DOJ, Fed. BOP, Fed. Transfer Ctr., Okla. City, Okla.*, 67 FLRA 221, 222 (2014) (citing *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Florence, Colo.*, 59 FLRA 165, 173 (2003)).

⁶ *Id.* at 223 (citing *F.E. Warren Air Force Base, Cheyenne, Wyo.*, 52 FLRA 149, 160 (1996)).

settlement in May 2011, and had been operating under it for almost two years, and then the federal government's Judge issued a separate decision is mind-boggling. It brings up the question that legendary baseball manager Casey Stengel asked during the New York Mets first season, when they lost 120 games: "Can't anybody play this game?" Just a little communication between the three parties via the U.S. Postal Service, email, Twitter, or even the Pony Express, would have prevented the FLRA from even considering this case and would have saved the American taxpayers probably several hundred thousand dollars.

Thank you.

Office of Administrative Law Judges

UNITED STATES
DEPARTMENT OF THE AIR FORCE
SHEPPARD AIR FORCE BASE
WICHITA FALLS, TEXAS
Respondent

AND

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 779, AFL-CIO
Charging Party

Case No. DA-CA-10-0215

Katie A. Smith
For the General Counsel

Charles R. Vaith
For the Respondent

Stephanie Medley-Arens
For the Charging Party

Before: SUSAN E. JELEN
Administrative Law Judge

DECISION

This case arose under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. § 7101, *et seq.* (the Statute), and the revised Rules and Regulations of the Federal Labor Relations Authority (the Authority/FLRA), 5 C.F.R. Part 2423.

On March 4, 2010, the American Federation of Government Employees, Local 779, AFL-CIO (Charging Party/Union) filed an unfair labor practice (ULP) charge against the United States Air Force, Sheppard Air Force Base, Wichita Falls, Texas (Respondent/Agency) with the Dallas Regional Office. The Regional Director of the Dallas Region issued a complaint and notice of hearing on December 3, 2010, claiming that the Respondent violated § 7116(a)(1) when a supervisor made statements interfering with, restraining, or coercing a bargaining unit employee in the exercise of her rights assured by the Statute and violated § 7116(a)(1) and (2) when the supervisor discriminated against that employee due to her protected activity.

The Respondent filed its answer to the complaint, in which it admitted certain facts but denied the substantive allegations of the complaint.

A hearing in this matter was held on January 27, 2011, in Wichita Falls, Texas. All parties were represented and afforded a full opportunity to be heard, to produce relevant evidence, and to examine and cross-examine witnesses. Both the General Counsel and Respondent filed post-hearing briefs that have been duly considered.

Based upon the entire record, including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions of law, and recommendations.

FINDINGS OF FACT

The Union is a labor organization within the meaning of § 7103(a)(4) of the Statute and is the exclusive representative of a unit of employees appropriate for collective bargaining at the Agency. At all times material to this matter, Stephanie Medley-Arens served as the President of the Union. Stephanie Armel was appointed as a Union Steward but, as discussed below, did not serve in that position. (Tr. 22-23, 72-73, 77; G.C. Ex. 1(c), 1(d)).

The Respondent is an activity of the United States Air Force (Air Force), which is an agency within the meaning of 5 U.S.C. § 7103(a)(3). During all times material to this matter, Valerie Cook was the Agency's Sexual Assault Response Coordinator (SARC). Steve Lindsey served as the Labor Relations Officer of the Agency. Dorothy Ramsey was a Human Resources Specialist in Employee-Management Relations and Labor-Management Relations for the Agency. Additionally, Patricia A. Leard served as the Classification Chief from 1999 to 2007, the Civilian Personnel Officer from 2007 to 2009, and the Flight Chief Over Manpower and Personnel from 2009 to the present. (Tr. 100, 139-41, 154-55, 166; G.C. Ex. 1(c), 1(d)).

In accordance with a Congressional mandate, the Respondent, on June 14, 2005, instituted "a Sexual Assault and Prevention Response" (SAPR) program to provide assistance to military sexual assault victims. (Tr. 48). Department of Defense (DoD) Directive Number 6495.01 (Directive 6495.01), which the DoD issued on October 6, 2005, initially governed the Respondent's SAPR program. Directive 6495.01 established "a comprehensive DoD policy on prevention and response to sexual assaults." (G.C. Ex. 6 at 1). This Directive further provided definitions for various key

terms applicable to the DoD's SAPR program. As relevant here, Directive 6495.01 defined Victim Advocates (VAs) as "[m]ilitary personnel, DoD civilian employees, DoD contractors, or volunteers who facilitate care for victims of sexual assault under the SAPR [p]rogram[] and who, on behalf of the . . . victim, provide liaison assistance with other organizations and agencies on victim care matters[] and report directly to the SARC." (*Id.* at 11). In addition, on June 23, 2006, the DoD issued Instruction Number 6495.02 (Instruction 6495.02), in part, to provide further guidance and procedures regarding DoD's SAPR program. Among other things, Instruction 6495.02 set forth training requirements for SAPR personnel, such as VAs. According to that Instruction, all VAs were required to "receive initial and periodic refresher training" on various issues, (Resp. Ex. 5 at 30), including sexual assault response policies, critical advocacy skills, victimology, and an "[o]verview of criminal investigative process and military judicial and evidentiary requirements". (*id.* at 31).

To implement Instruction 6495.02, the Air Force, on September 29, 2008, issued Instruction 36-6001, which contained additional guidelines regarding the SAPR program and "applie[d] to all levels of command and all . . . organizations" within the Air Force. (G.C. Ex. 7 at 1). As relevant here, Instruction 36-6001 addressed the role of the Installation SARC Administrative Assistant (SARC Assistant). According to this Instruction, a SARC Assistant, among other things, was required, "a[t] a minimum," to complete the VA training established by Instruction 6495.02 "prior to being granted access to covered communications," to manage the SAPR program's budget, to maintain the VA on-call schedule and provide administrative support for VAs, to "schedule SARC appointments and follow-ups, and [to] perform other duties as required." (*Id.* at 13). Also, Instruction 36-6001 provided further guidance concerning the VA application process by indicating that, to volunteer, employees had to "submit[] a Commander's or Agency Head's Statement of Understanding[,] . . . [a] Volunteer's Statement of Understanding[,] . . . and [a] Volunteer [VA] Application." (*Id.*) (citing Attachs. 3, 4, 6). Moreover, this Instruction explained the various responsibilities of VAs, such as "providing crisis intervention, referral[,] and ongoing non-clinical support[] [by] [supplying] information on available options and resources." (*Id.* at 14).

After establishing its SAPR program, the Respondent hired Armel as a SAPR Assistant. Except for a detail between August 2008 to October 2009, Armel occupied that position from December 2005 through November 2010. When the Respondent hired Armel, it gave her a core personnel document

(core document). Armel's core document contained her position description, detailing her duties as a SAPR Assistant. Per her position description, Armel was required to have certain knowledge, skills, and abilities, including: (1) "[k]nowledge of laws, regulations, executive orders, and/or issues relating to victim advocacy, sexual assault, and other acts of interpersonal violence" and (2) knowledge of social service delivery systems relating specifically to sexual assault. (G.C. Ex. 8 at 5). Her position description also provided that she could "be required to work other than normal duty hours, which m[ight] include evenings, weekends, and/or holidays." (*Id.* at 4). Further, Armel's position description set forth the five critical elements of her position. With regard to Duty 1, which constituted twenty-five percent of her critical elements, it provided that a SAPR Assistant was required to provide direct support to the SARC. To provide this support, a SAPR Assistant was expected, among other things, to communicate routinely with and assist both victims and VAs under stressful and traumatic circumstances and to make "appropriate referrals to the judge advocate office, Office of Special Investigations[,] . . . security forces, commanders[,] and local enforcement agencies." (*Id.* at 3). A SAPR Assistant was required to help victims obtain "emergency assistance, medical and clinical care, and life[-]skills counseling [from] the Family Advocacy Office[,] . . . rape crisis centers, shelters for victims of domestic violence, and private counseling services." (*Id.*). Additionally, a SAPR Assistant was expected to act, in consultation with the SARC, as a liaison between victims and medical, health, and social service organizations. (Tr. 47-48, 51, 54, 63, 66-69, 79, 102-03, 164, 180; G.C. Ex. 8).

On August 18, 2008, Armel completed the forty-hour VA training. Less than a month later, a twenty percent Social Science Technician skill code was added to Armel's core document, which was contained in her personnel file. Also, approximately one week after the skill code's addition, she received a document titled "Addendum for Core Doc #04097[,] Addendum for [Position Description], Sexual Assault [VA] Collateral Duties"¹ (Addendum). (G.C. Ex. 8 at 8). Among other things, the Addendum provided that, in compliance with Directive 6495.01, the employee served as a VA for the SAPR program by providing assistance to sexual assault victims. The Addendum also specified that the employee was required to: (1) provide victims with one-on-one direct, ongoing support, crisis intervention, and referrals and (2) assist "the victim through initial response, investigative, legal, and recovery processes[] [by] providing information on available options and resources." (*Id.*). The Addendum indicated that the

¹ For purposes of this decision, the terms "collateral duty" and "special-emphasis duty" are used interchangeably.

employee could be on call. Further, the Addendum provided that, to include it with an employee's position description, the employee must have completed the VA training. (Tr. 58, 60-61, 63-66, 69-71, 78-82, 84, 91-94, 182-83, 189-90; G.C. Exs. 8, 12).

Armel testified that she did not volunteer to serve as a VA, but, rather, was required to perform victim advocacy duties pursuant to Duty 1 of her position description. In this regard, Armel claimed that, as a SAPR Assistant, she was the first line of defense for victims because, when they came into the SAPR office, she would evaluate their immediate needs, ensure their safety, and then refer them to the SARC who would perform the official intake. Armel maintained that, under Duty 1 of her position description, she was expected to perform various victim advocacy duties, including referring victims to appropriate social service organizations. Also, she asserted that, when the on-call VA was unavailable or a few victims required immediate care, she would assist the victim as a permanent staff member of SAPR. According to Armel, while working as a SAPR Assistant, she was assigned as a victim's primary VA ten to fifteen times. However, she maintained that most of these assignments occurred when Jacqueline Shiflet was the SARC because the number of sexual assaults had decreased by the time that Cook was hired as SARC. Additionally, Armel asserted that, per her position description, she could be required to assist victims outside of normal duty hours if, for example, a victim needed assistance during the night, and she was that victim's primary VA. (Tr. 51-53, 66-68, 71-72, 85-89).

Armel asserted that, after the VA training was established by Instruction 6495.02, she had to complete that training as a requirement of her position because she regularly handled sensitive information, namely covered communications. Also, Armel claimed that, unlike volunteer VAs, she was rated on and received awards based on her performance of victim advocacy duties. According to Armel, if a victim had a negative interaction with her when she was performing those duties, then that interaction could negatively impact her performance appraisal for Duty 1. Similarly, Armel asserted that, unlike volunteer VAs who were required to submit the documents listed in Instruction 36-6001, which included a volunteer VA application, she was not required to complete such documentation because she performed victim advocacy duties as part of her position. Further, Armel testified that, in anticipation of a February 2010 inspection of the SAPR program's files, Captain Jaimie Gallego who worked under Cook as the Assistant SARC drafted memoranda, in which she indicated that Armel was not required to submit a Commander Statement of Understanding or a Volunteer VA Application and that no interview was conducted

because she received the VA training to perform her duties as a SAPR Assistant. (Tr. 58, 60-63, 67-68, 92, 181-86, 189-92).

Moreover, Armel maintained that, in addition to volunteer civilian VAs, she received the Addendum as a result of completing the VA training. Armel claimed that, when Shiflet was the SARC, she instructed Leard to add the Social Science Technician skill code to Armel's core document to conform to the coding of SAPR Assistants at other installations and not to indicate that Armel had volunteered to be a VA. According to Armel, neither her receipt of the Addendum nor the addition of the skill code to her core document changed her job duties. However, Armel admitted that headquarters issued instructions via email on January 13, 2006, providing that employees who received the Addendum should also receive the Social Science Technician skill code. (Tr. 63-66, 69-72, 82-83, 91-94, 189-90).

Cook testified that, when Armel returned to the SAPR office after finishing her detail, Cook spoke with Armel about her position description and specifically told her that she was not required to perform victim care as a SAPR Assistant. Cook claimed that Armel's duties were administrative in nature and that her regular duties, among other things, included: writing letters, taking phone calls, drafting briefings, managing the VA-call roster, and taking minutes. Similarly, Cook claimed that Armel only assisted victims on a surface level. However, Cook admitted that: (1) Armel was the current front line in interacting with victims when they called or came into the office; (2) she had served as the primary VA on two occasions when the on-call, volunteer VA was unavailable; and (3) she could, as a SAPR Assistant, be required to assist a pregnant victim of sexual assault by serving as a liaison between that victim and medical or social service organizations. Cook also conceded that language contained in Duty 1 of Armel's position description and in the Addendum was most likely not different. Moreover, while Cook initially testified that, even if Armel stopped performing victim advocacy duties or had a negative interaction with a victim, her performance rating would not be affected, Cook later admitted that a victim's negative interaction with Armel would affect her performance evaluation for Duty 1. (Tr. 102-06, 109-12, 114-16, 122-28, 134-38).

In addition, Cook asserted that Armel had volunteered to be a VA as a collateral duty and was appointed before Cook became the SARC. In this regard, Cook testified that all volunteer VAs were expected to complete the documents listed in Instruction 36-6001. Also, Cook claimed that she saw Armel's completed documents before they went missing. According to Cook, Captain Gallego kept an excel spreadsheet listing

the documents that volunteer VAs submitted, and her spreadsheet indicated that Armel had completed the required documentation. Moreover, when questioned about the memoranda Captain Gallego drafted in anticipation of the February 2010 inspection, Cook could not explain why Captain Gallego would draft those memoranda if Armel's completed documents were on file. (Tr. 104, 110, 116-18, 128-33).

Cook claimed that, although Armel had to be appointed to perform victim advocacy duties, she was required, as a SAPR Assistant, to take the VA training to handle sensitive information. Relatedly, Leard asserted that she was unsure of whether an employee who did not volunteer to serve as a VA could be required to complete that training. Also, Leard testified, and Ramsey confirmed, that, in general, when an employee was appointed to a collateral duty, an addendum was attached to the employee's core document and a skill code linked to the addendum was added to that document. Both Cook and Leard claimed that, when an employee completed the VA training, that employee received the Addendum. Further, Leard asserted that she was asked by Shiflet to add the Social Science Technician skill code, which was tied to the VA collateral duty, to Armel's core document. (Tr. 104-05, 108, 112, 116, 133-34, 142-44, 147-49, 155-62).

On January 15, 2010, Medley-Arens asked Armel to serve as a Union Steward, specifically as the Union's Local Fair Practices Coordinator. After Medley-Arens obtained Armel's consent, Medley-Arens notified Lindsey via email of Armel's designation as a Union Steward pursuant to Article 6, Section 2 of the parties' agreement. Lindsey testified that he received this email. According to Lindsey, although he believed that Armel could not serve as both a VA and as a Union Steward because both positions were collateral duties, and the Respondent only allowed employees to perform one collateral duty, he never responded to Medley-Arens's email. Additionally, Lindsey testified that, despite his belief, he did not attempt to accommodate Armel's request to serve as a Union Steward. (Tr. 25-28, 73, 167-72).

Based on Medley-Arens's advice, Armel sent an email to Cook on February 18, 2010, in which Armel identified herself as a Union Steward, proposed an official-time schedule, and allowed Cook to suggest an alternative schedule if the proposed schedule was not agreeable to her. Cook responded to Armel via email, denying her request for official time because she could not serve as both a Union Steward and a VA. Cook then sent Armel another email, stating that she could choose to either perform victim advocacy or Union duties. According to Cook, she sent the emails after an employee in the Respondent's personnel office told her that

Armel could not perform two collateral duties. After receiving those emails, Armel spoke with Medley-Arens, and, during their discussion, Medley-Arens stated that she would directly handle the matter and that Armel should have no further discussions about it with Cook. (Tr. 28, 34, 42, 73-75, 89-90, 94-95, 118-19, 121-22; G.C. Ex. 10).

On March 1, 2010, Cook sent another email to Armel, asking whether she had decided to serve as a Union Steward or as a VA. Armel testified that she did not respond to this email. (Tr. 75-76; G.C. Ex. 11).

After filing the ULP charge, Medley-Arens contacted both Ramsey and Lindsey via email on March 5, 2010, requesting that they explain Cook's actions in making Armel choose between her duties as a Union representative and as a SAPR Assistant. Ramsey responded via email, stating that an employee could not have two special-emphasis duties and that both Armel's VA and Union Steward positions qualified as special-emphasis duties. Medley-Arens replied to both Ramsey and Lindsey, stating, among other things, that serving as a Union representative was a right protected under law and, thus, not a special-emphasis duty. Further, Armel testified that, after the ULP charge was filed, she was chastised for demanding a particular official-time schedule and was told that her position description would be redefined during a meeting with Cook. According to Armel, after that meeting, Cook redefined Armel's position description by taking away her victim advocacy duties and her ability to communicate with commanders. (Tr. 29-31, 76-77, 95, 97-98, 151-52; G.C. Ex. 5).

Ultimately, Armel chose not to serve as a Union Steward. According to Armel, she made this choice because she was required to perform victim advocacy duties as part of her position, and, if she stopped performing those duties, she could not have received a fully-successful rating. (Tr. 34, 72-73, 77).

POSITION OF THE PARTIES

General Counsel

The General Counsel contends that the Respondent violated § 7116(a)(1) of the Statute when Cook made statements to Armel that interfered with, restrained, and coerced her in the exercise of rights afforded her under the Statute. In support of this contention, the General Counsel claims that, by first denying Armel the right to engage in protected activity and then requiring her to choose between her victim advocacy and Union duties, Cook improperly interfered with Armel's right to act as a Union representative. The General Counsel argues that evidence and testimony

demonstrate that Armel did not volunteer to serve as a VA, but, rather, performed victim advocacy duties as part of Duty 1 of her position description. Specifically, the General Counsel asserts, among other things, that certain expectations contained in Armel's position description mirror certain responsibilities of VAs listed in the Addendum. Also, the General Counsel maintains that, per Instruction 36-6001, Armel was expected to complete the VA training to perform her job duties and that, as with other employees, Armel's completion of the training "prompted the addition of the Addendum to [her] position description, . . . which did not alter her performance of victim advocacy duties under Duty 1." (G.C. Br. at 21). According to the General Counsel, the Social Science Technician skill code was added to Armel's core document "in recognition of the complex victim interaction required of the [SAPR] Assistant." *Id.* The General Counsel argues that, based on the existence of memoranda drafted by Captain Gallego, in which she indicated that Armel was not required to fill out the documents listed in Instruction 36-6001, "th[e] Respondent did not consider Armel's victim advocacy duties to be voluntary prior to her becoming a Union [S]teward."² (*Id.* at 22) (emphasis omitted). Moreover, the General Counsel asserts that Armel credibly testified she was rated and received awards based on her performance of victim advocacy duties and that Cook admitted a negative victim interaction would affect Armel's performance rating.

Further, the General Counsel maintains that, under Authority precedent, Cook's statements to Armel were not an attempt at accommodation. *See, e.g., Dep't of the Air Force, Ogden Air Logistics Ctr., Hill Air Force Base, Utah*, 35 FLRA 891, 896-98 (1990) (*Hill AFB*); *Veterans Admin. Med. Ctr., Leavenworth, Kan.*, 31 FLRA 1161, 1169-70 (1988) (*VAMC Leavenworth*). According to the General Counsel, because Cook's statements to Armel "were not accompanied by any reference to a specific conflict" between her job duties and the Respondent's ability to manage its operations efficiently or by "any discussion of how such a conflict might be accommodated," the Respondent has conceded that no conflict existed. (G.C. Br. at 25).

In addition, the General Counsel asserts that the Respondent violated § 7116(a)(1) and (2) of the Statute by discriminating against Armel because she engaged in

² During the hearing, the Respondent expressed some doubt as to the authenticity of the memoranda drafted by Captain Gallego. Because Medley-Arens testified that the Union received these memoranda from the Respondent's civilian personnel office as a result of a request for information under the Statute, and the Respondent presented no specific evidence to refute its own documents, I will consider them. (Tr. 131, 175-76).

activity protected by the Statute. In support of its assertion, the General Counsel argues that Medley-Arens notified the Respondent that the Union had chosen Armel to be a Union Steward. The General Counsel claims that it is undisputed Armel was engaged in protected activity when she requested official time to perform her Union-representational duties. Also, the General Counsel maintains that "Armel's protected activity was the motivating factor in [the] Respondent's discriminatory treatment" of her, *id.* at 26, "in connection with tenure, promotion, or other conditions of employment". (*id.* at 27). Specifically, the General Counsel contends that, when Armel requested official time, Cook initially refused to allow Armel to engage in protected activity and then forced her to choose between performing her job duties and serving as a Union Steward. According to the General Counsel, Armel was not really given a choice because she was rated on and received awards for her performance of victim advocacy duties and would not have received a fully-successful rating if she choose not to perform those duties. The General Counsel further claims that "[p]erformance appraisals are intrinsically linked to an employee's conditions of employment and success or failure in meeting the standards affects the very heart of an employee's working conditions," such as "promotions, demotions, terminations, RIF standings, awards, and within-grade increases." (*Id.*). Moreover, the General Counsel contends that the Respondent has failed to offer an affirmative defense demonstrating that its actions were legitimately justifiable and that, while the Respondent asserts that employees were not allowed to perform two collateral duties, the Respondent has failed to recognize that serving as a Union representative constitutes protected activity under the Statute.

As remedy, the General Counsel requests that the Respondent be ordered to post a notice signed by Commander Brigadier General Darryl W. Burke in conspicuous places, including all bulletin boards and other locations where notices to employees are customarily posted.³

Respondent

The Respondent claims that, based on testimony and evidence, the General Counsel has failed to establish that it violated § 7116(a)(1) and (2) of the Statute. With regard to testimony presented at the hearing, the Respondent asserts that Cook credibly testified, among other things, that: (1) she remembered seeing Armel's completed Volunteer VA Application and Statement of Understanding; (2) she told Armel, during a meeting, that providing victim care was not included in

³ Since Armel is no longer employed at Sheppard AFB, the GC is not seeking an affirmative remedy regarding her position.

Armel's job description; and (3) she never considered Armel's performance of victim advocacy duties in rating Armel. Also, the Respondent maintains that Ramsey gave credible testimony concerning, among other things, the addition of the Addendum and corresponding skill code to Armel's core document. Additionally, the Respondent argues that Leard reliably testified that the skill code was added to Armel's core document when she volunteered to be a VA as a collateral duty.

With regard to evidence presented at the hearing, the Respondent asserts that such evidence shows that Armel volunteered to serve as a VA and did not perform victim advocacy duties as a SAPR Assistant. Among other things, the Respondent claims that, in paragraphs 2.4 and 2.5 of Instruction 36-6001, a distinction was made between duties of volunteer VAs and SARC Assistants. Also, the Respondent contends that the Social Science Technician skill code was not added to Armel's core document and that the Addendum was not attached to Armel's position description until several months after she was hired as a SAPR Assistant. Moreover, the Respondent indicates that a letter submitted as evidence by the General Counsel indicates that Armel was appointed as a VA. (G.C. Ex. 12).

Further, the Respondent maintains that it exercised "its inherent management right of assigning work" when it decided that all employees, including Armel, could only perform one collateral duty. (Resp. Br. at 9). The Respondent contends that its past practice requiring an employee to only have one collateral duty was neutrally applied, that it had enforced this practice in the past, and that the Union acquiesced to this practice's enforcement. According to the Respondent, it did not interfere with, restrain, or coerce Armel in exercising her right to serve as a Union representative because she could have chosen to serve as a Union Steward and would have been entitled to twenty-five percent official time for representational activities under the parties' agreement. Finally, the Respondent notes that, if Armel were allowed to serve as both a volunteer VA and a Union Steward, then Armel "would be allowed to spend forty-five percent of her duty time performing [v]ictim[-][a]dvoca[cy] duties and conducting [U]nion business, rather than [performing] the duties . . . set forth in her" position description. (*Id.*).

DISCUSSION AND ANALYSIS

The Respondent Violated § 7116(a)(1) of the Statute When a Supervisor Made Statements that Interfered with, Restrained, or Coerced a Bargaining-Unit Employee in the Exercise of Her Rights Assured by the Statute.

Pursuant to § 7102 of the Statute, an "employee shall have the right to form, join, or assist any labor organization . . . freely and without fear of penalty or reprisal." *Dep't of the Air Force, Scott AFB, Ill.*, 34 FLRA 956, 962 (1990) (*Scott AFB*). Section 7102 also provides that such right includes the ability "to act for a labor organization in the capacity of a representative." 5 U.S.C. § 7102; *see also Dep't of the Treasury, U.S. Customs Serv., Region IV, Miami, Fla.*, 19 FLRA 956, 969 (1985) (*Customs Serv.*). The Authority has held that statements made by a supervisor that tend to interfere with, restrain, or coerce an employee from exercising that right violate § 7116(a)(1) of the Statute. *E.g., VAMC Leavenworth*, 31 FLRA at 1169.

Every statement that concerns "an employee's protected activity does not violate the Statute." (*Id.*). Rather, the Authority has found that an agency has a valid interest, protected by § 7106 of the Statute, in managing its operations efficiently and that this interest must be weighed against an employee's right to use "official time for activities protected by [§] 7131 of the Statute." (*Id.*). Additionally, the Authority has determined that, when conflicts arise due to these competing interests, "the parties must recognize the need for and seek accommodation." (*Id.* at 1170).

The standard for determining whether a supervisor's statement violates § 7116(a)(1) is an objective one. *E.g., Scott AFB*, 34 FLRA at 962. Although "the circumstances surrounding the making of the statement are taken into consideration, the standard is not based on the subjective perceptions of the employee or on the intent of the employer." (*Id.*).

Here, it is undisputed that, after Armel sent an email to Cook, in which Armel identified herself as a Union Steward and proposed an official-time schedule to perform her representational duties, Cook responded to Armel via email initially denying Armel's request for official time and then allowing her to choose between performing victim advocacy and Union Steward duties. Also, the Respondent does not contest Armel's testimony that, during a later meeting with Cook, Armel was chastised for demanding a particular official-time schedule and was told her position description would be redefined. Cook's statements drew a direct connection between Armel's protected activity, namely requesting official time to perform her representational duties, and

Armel's ability to perform victim advocacy duties. As a result, a reasonable, bargaining unit employee could conclude, based on those statements, that, by serving as a Union representative, he or she would be denied the ability to participate in victim advocacy duties or other meaningful opportunities. (*id.* at 964-65) (finding that, when a management official's statement drew a direct connection between an employee's protected activity and that employee's chance to be selected for a particular position, a bargaining unit employee reasonably could assume that he or she would be unable to successfully compete for that position as a union official).

In addition, the accommodation defense is inapplicable in this case. In this regard, the Respondent, in its brief, does not allege that there was an ongoing conflict between its right to manage its operations efficiently and Armel's right to use official time. Also, the record does not demonstrate that such a conflict existed because Armel was designated as a Union Steward less than a month before she sent the email on February 18, 2010, and she had never requested official time prior to sending Cook that email. In making her statements, Cook did not mention any conflict between Armel's request for official time and the performance of her duties as a SAPR Assistant or discuss how such a conflict could be accommodated. While Lindsey testified that, when he was notified that Armel was appointed as a Union Steward, he perceived a conflict between Armel's role as a Union Steward and as a VA, he perceived this conflict because of the Respondent's practice of allowing employees to perform one collateral duty and not because of Armel's usage of official time. Further, Lindsey admitted that, while he perceived this conflict, he never notified the Union about it and did not attempt to accommodate Armel's request to serve as a Union Steward. Thus, the statements at issue were not an attempt at accommodation. *Hill AFB*, 35 FLRA at 898 (concluding that, based on the record, the supervisor's statements made after an employee's performance appraisal was issued did not constitute an attempt at accommodation because, prior to the appraisal's issuance, the supervisor did not suggest ways to accommodate the perceived conflict); *Veterans Admin., Wash., D.C. & VAMC & Reg'l Office, Sioux Falls, S.D.*, 23 FLRA 122, 124 (1986) (determining that questions posed by a supervisor to a union steward about his union position during an interview did not constitute an attempt at accommodation because there was no specific, ongoing conflict between the union steward's "right to use official time and the agency's right to manage effectively and efficiently").

Consequently, I find that Cook's statements interfered with, restrained, or coerced Armel's right under § 7102 of the Statute to act as a Union representative. *See Customs Serv.*, 19 FLRA

at 956, 969 (upholding a judge's determination that a supervisor's statements interfered with, restrained, or coerced a union official's § 7102 rights when the most rational conclusion to be drawn from those statements was that the official was denied a desirable detail solely because he was a union representative). Accordingly, I conclude that the Respondent violated § 7116(a)(1) of the Statute.

The Respondent Violated § 7116(a)(1) and (2) of the Statute When a Supervisor Discriminated Against a Bargaining-Unit Employee Because of Her Protected Activity.

In *Letterkenny Army Depot*, 35 FLRA 113, 118-23 (1990), the Authority set forth the analytic framework for resolving "allegations of discrimination under § 7116(a)(2) of the Statute." *U.S. Dep't of Def., U.S. Air Force, 325th Fighter Wing, Tyndall AFB, Fla.*, 66 FLRA 256, 261 (2011) (*Tyndall AFB*). Under that framework, the general counsel has the overall burden of proving "by a preponderance of the evidence that: (1) the employee against whom the discriminatory action was taken was engaged in protected activity; and (2) such activity was a motivating factor in the treatment of the employee in connection with hiring, tenure, or other conditions of employment." *U.S. Penitentiary, Leavenworth, Kan.*, 55 FLRA 704, 712 (1999). If the general counsel meets its burden, then the respondent, as an affirmative defense, "may establish by a preponderance of the evidence[] . . . that: (1) there was a legitimate justification for the action; and (2) the same action would have been taken even in the absence of the employee[s] protected activity." (*Id.*).

I find that the General Counsel has established a prima facie case of discrimination. With respect to the first prong of the prima facie test, it is undisputed that Armel was appointed as a Union Steward and that the Respondent was aware of her appointment. Similarly, the Respondent does not contest that Armel was engaged in protected activity when she requested official time via email on February 18, 2010 to perform representational activities. Moreover, the Authority has held that serving as a union official and requesting official time to perform representational duties constitute protected activity. *See Dep't of the Air Force, WRALC, Warner Robins AFB, Ga.*, 52 FLRA 602, 615 (1996) (*Warner Robins AFB*); *AFGE, Nat'l Border Patrol Council*, 44 FLRA 1395, 1402 (1992). Thus, the General Counsel has shown that Armel was engaged in protected activity. *See U.S. Dep't of the Air Force, 60th Air Mobility Wing, Travis AFB, Cal.*, 59 FLRA 632, 636 (2004) (*Travis AFB*) (finding that an employee was engaged in protected activity when the respondent did not contend otherwise); *Warner Robins AFB*, 52 FLRA at 615 (concluding that an employee was engaged in

protected activity when it was undisputed that the employee was serving as a union representative and that the respondent was aware of that activity).

With regard to the second prong of the prima facie test, the record demonstrates that, on the same day that Armel sent an email to Cook requesting official time to perform Union representational activities, Cook responded via email initially denying Armel's request for official time and then forcing her to choose between performing victim advocacy and Union duties. As a result, there was a close proximity of time between Armel's protected activity and the Respondent's actions. Also, it is undisputed that Armel's appointment as a Union Steward and subsequent request for official time precipitated in her having to choose between performing victim advocacy and Union representational duties. Additionally, the Respondent does not contest Armel's contention that Cook redefined Armel's position description by taking away her victim advocacy duties and her ability to communicate with commanders because she requested official time to perform Union Steward activities. Consequently, the General Counsel has demonstrated that Armel's protected activity was the motivating factor in Cook's actions. *See Tyndall AFB*, 66 FLRA at 261 (determining that the employee's protected activity was the motivating factor in the respondent's decision to change that employee's work schedule, in part, because of "the close proximity of time between the two events"); *Customs Serv.*, 19 FLRA at 956, 971-72 (upholding the judge's determination that the general counsel established its prima facie case, in part, because the record demonstrated that the employee was denied a detail solely because of his position as a union official).

In addition, I find that the Respondent has failed to provide a legitimate justification to rebut the General Counsel's prima facie case. While the Respondent contends that it was exercising its right to assign work when it established a practice requiring all employees to only participate in one collateral duty and that it acted consistent with this practice when it required Armel to choose between performing victim advocacy and Union representational duties, the record establishes that Armel performed victim advocacy duties as a SAPR Assistant and not as a volunteer VA. In this regard, Armel's testimony that she performed victim advocacy duties, such as referring victims to appropriate social service organizations, as a SAPR Assistant, is credible because she consistently testified that she performed such duties under Duty 1 of her position description. In comparison, Cook's testimony concerning Armel's duties as a SAPR Assistant was inconsistent. While Cook initially stated, among other things, that Armel's duties were purely administrative and that she only assisted victims on a surface level, Cook later

admitted that: (1) Armel was the current front line in interacting with victims when they called or came into the office; (2) she could be required, as a SAPR Assistant, to assist a pregnant victim of sexual assault by serving as a liaison between that victim and medical or social service organizations; and (3) the language contained in Duty 1 of her position description and the Addendum was most likely not different.

Similarly, Armel's testimony is credible because it is supported by evidence presented at the hearing. Specifically, evidence demonstrates that, to perform her duties as a SAPR Assistant, Armel was required to have certain knowledge, skills, and abilities related to victim advocacy, such as "[k]nowledge of laws, regulations, executive orders, and/or issues relating to victim advocacy, sexual assault, and other acts of interpersonal violence." (G.C. Ex. 8 at 5). Also, evidence shows that the expectations contained in Duty 1 of Armel's position description mirror the responsibilities of VAs listed in the Addendum. (*id.* at 3) (indicating that a SAPR Assistant is expected, among other things, to communicate routinely with and assist victims under stressful and traumatic circumstances, to make appropriate referrals, and to help victims obtain "emergency assistance, medical and clinical care, and life[-]skills counseling"); *see also id.* at 4 (providing that a SAPR Assistant may have to work outside normal duty hours, such as evenings, weekends, and/or holidays); (*id.* at 8) (noting that a VA may be on call and is required to not only provide victims with one-on-one direct, ongoing support, crisis intervention, and referrals but also to assist victims "through initial response, investigative, legal, and recovery processes"). Relatedly, while Instruction 36-6001 provides separate descriptions of SARC Assistants and volunteer VAs, some of the requirements contained in Duty 1 of Armel's position description parallel certain responsibilities of VAs listed in that Instruction. (*id.* at 3) (indicating that a SAPR Assistant is expected, among other things, to provide victims with appropriate referrals and to assist victims in obtaining, among other things, life-skills counseling); *see also* (G.C. Ex. 7 at 14) (noting that a VA must "provid[e] crisis intervention, referral[,] and ongoing non-clinical support" to victims). Further, although the description of SARC Assistants contained in Instruction 36-6001 does not include certain expectations contained in Duty 1 of Armel's position description, the Instruction states that, "a[t] a minimum," SARC Administrative Assistants will perform certain listed duties. (G.C. Ex. 7 at 13).

Also, Armel reliably testified that, unlike volunteer VAs, she was rated on and received awards based on her performance of victim advocacy duties and that a negative victim interaction could impact her performance appraisal for Duty 1. Unlike

Armel's consistent testimony on this issue, Cook initially claimed that, even if Armel stopped performing victim advocacy duties or had a negative interaction with a victim, her performance rating would not be affected but later conceded that a victim's negative interaction with Armel would affect her performance evaluation. Additionally, Armel's undisputed testimony and evidence show that, shortly after the VA training was established by Instruction 6495.02, she was required to complete that training before being granted access to covered communications, which she regularly handled as a SAPR Assistant.

Armel credibly testified that she did not volunteer to be a VA because, unlike volunteer VAs who were required to submit the documentation listed in Instruction 36-6001, she was not required to complete such documentation. While Cook claimed that Captain Gallego's excel spreadsheet indicated that Armel had completed those documents and that Cook saw Armel's completed documents before they went missing, Armel's testimony on this issue is more reliable. In this regard, Armel is in the best position to know whether she volunteered to be a VA because Cook was not hired as the SARC until after Armel allegedly volunteered. Also, Cook's testimony is unsupported by evidence presented at the hearing. Although the General Counsel submitted copies of memoranda signed by Captain Gallego, in which she indicated that Armel was not required to submit such documentation and that no interview was conducted because she received VA training in order to perform her job duties, the Respondent did not provide a copy of Captain Gallego's spreadsheet to show that Armel completed the required documentation.

Further, the attachment of the Addendum to Armel's position description and the addition of the Social Science Technician skill code to Armel's core document do not prove that she volunteered to serve as VA. In this regard, Armel credibly testified that her duties did not change as a result of the attachment of the Addendum and the addition of the skill code. Also, testimony and evidence demonstrate that Armel received the Addendum and corresponding skill code because she completed the VA training required for her SAPR Assistant position. While Armel testified that Shiflet instructed Leard to add that skill code to Armel's core document to conform to the coding of SAPR Assistants at other installations, Leard who served as the Agency's Classification Chief is in a better position to know why she was asked to add the skill code to that document.

However, even if Armel performed victim advocacy duties as a collateral duty, the Respondent's justification for requiring Armel to choose between

performing victim advocacy and Union Steward duties still fails. Representational activities are not a collateral duty assigned by the Respondent. *Cf. U.S. Dep't of Def., Army & Air Force Exch. Serv., Dall., Tex.*, 53 FLRA 20, 24 (1997) (finding that the employee's performance of union representational activities did not involve the assignment of work within the meaning of § 7106 of the Statute); *NFFE, Local 1798*, 27 FLRA 239, 254 (1987) (same); *Tidewater Va. Fed. Emps. Metal Trades Council*, 25 FLRA 3, 12 (1987) (concluding that, because the designation of an employee as a union representative was "not a management assignment of work under [§] 7106(a)(2)(B) of the Statute[,] . . . management [could not] establish critical elements for an employee's performance of his [or her] responsibilities as a union representative"). Rather, as discussed above, serving as a Union representative is a protected activity under § 7102 of the Statute. *See 5 U.S.C. § 7102; Customs Serv.*, 19 FLRA at 969.

Consequently, by not providing a legitimate justification for its actions, the Respondent has failed to rebut the General Counsel's prima facie case of discrimination, and, as a result, the General Counsel has established by a preponderance of the evidence that the Respondent violated § 7116(a)(1) and (2) of the Statute. *See Travis AFB*, 59 FLRA at 638; *U.S. Customs Serv., Region IV, Miami Dist., Miami Fla.*, 36 FLRA 489, 498-99 (1990).

Having found that the Respondent has violated the Statute as alleged in the complaint, I recommend that the Authority adopt the following order:

ORDER

Pursuant to § 2423.41(c) of the Authority's Rules and Regulations and § 7118 of the Federal Service Labor-Management Relations Statute (the Statute), it is hereby ordered that the United States Air Force, Sheppard Air Force Base, Wichita Falls, Texas, shall:

1. Cease and desist from:

(a) Threatening bargaining unit employees for engaging in representational activities on behalf of the Union. .

(b) Discriminating against Stephanie Armel, or any other bargaining unit employee, by requiring that the employee choose between engaging in representational activities on behalf of the American Federation of Government Employees, Local 779, AFL-CIO (the Union), the exclusive representative of our employees, and their job duties.

(c) In any like or related manner, interfering with, restraining, or coercing bargaining unit employees in the exercise of their rights assured them by the Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:

(a) Post at its facilities where bargaining unit employees represented by the Union are located, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Commander, United States Air Force, Sheppard Air Force Base, Wichita Falls, Texas, and shall be posted and maintained for sixty (60) consecutive days thereafter in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

(b) Pursuant to § 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Dallas Region, Federal Labor Relations Authority, in writing, within thirty (30) days from the date of this Order, as to what steps have been taken to comply.

Issued Washington, D.C., April 17, 2013

SUSAN E. JELEN
Administrative Law Judge

**NOTICE TO ALL EMPLOYEES
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY**

The Federal Labor Relations Authority has found that the United States Air Force, Sheppard Air Force Base, Wichita Falls, Texas, violated the Federal Service Labor-Management Relations Statute (the Statute), and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT threaten bargaining unit employees for engaging in representational activities on behalf of the American Federation of Government Employees, Local 779, AFL-CIO (the Union), the exclusive representative of our employees.

WE WILL NOT discriminate against bargaining unit employees and interfere with, restrain, or coerce employees by requiring them to choose between engaging in representational activities on behalf of the Union and their job duties.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce bargaining unit employees in the exercise of their rights assured them by the Statute.

(Agency/Activity)

Dated: _____ By: _____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director, Dallas Region, Federal Labor Relations Authority, and whose address is: 525 S. Griffin Street, Suite 926, Dallas, TX 75202, and whose telephone number is: 214-767-6266.